



DOJ AMENDMENTS TO HB 2 FOR SENATE FINANCE

- 1. MAINTAIN CURRENT EMPLOYEE SALARIES \$2,203,926**
 Selective pay increases to bring DOJ closer to the market mid-point. Certain areas in DOJ fell behind when other agencies gave increases in the 2011 and 2013 biennium. Needed for recruitment and retention. This amount includes the Governor's 2% of the 5%.
- 2. CONTINGENCY LANGUAGE FOR MAJOR LITIGATION \$800,000**
 The Legal Services Division is appropriated \$800,000 for major litigation if HB 244 is not passed and approved. If HB244 is not passed and approved, this amendment will restore major litigation funding back to the 10 yr. average. It was cut last session, but restricted OTO funding added back in. This is \$1.2 million less than the last biennium.
- 3. LEGAL SERVICES DIVISION FTE RESTORATION \$201,246**
 Three positions were cut in this division due to the 4% FTE reduction. It would be difficult to operate with this kind of reduction in force. Requesting one lawyer position back.
- 4. MDC INVESTIGATOR (Boulder) (OTO) \$200,012**
 This was mandated by the 2013 legislature but due to strict state and federal investigative and reporting requirements one person, as previously funded, cannot accomplish this. This could be OTO if the Boulder issue is to be resolved in the future.
- 5. FSD TOXICOLOGIST \$292,794**
 The toxicology section has been requesting additional FTE for many legislative sessions to offset a 50% increase in caseload.
- 6. SEXUAL ASSAULT AND TRIBAL RELATIONS TRAINING \$40,000**
 Montana like many states is experiencing the ever increasing offenses of sexual assault.
- 7. CONTINGENCY LANGUAGE TO REISSUE LICENSE PLATES \$3,401,949**
 The Motor Vehicle Division is appropriated \$3,401,949 to reissue license plates every five years if HB 628 is not passed and approved.

Administratively Attached

**MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING
COUNCIL (BIEN)**

\$50,000

Provides for POST to pay for the legal costs associated with their statutory duty of suspension or revocation of officer certifications. The amount requested will bring the budget back to the fiscal year 2014 level.

Total Cost of amendments less OTO, and the percent increase **\$3,537,966 2.01%**

Give Backs

Transfer Consumer Protection Settlement funding to the general fund: -\$970,000

Revert State Special Revenue in FY15 from the MHP -\$822,303

DOJ generated \$170 million General Fund in FY2014 and \$62 million in special revenue.

NARRATIVES FOR AMENDMENTS

MAINTAIN CURRENT EMPLOYEE SALARIES

The Department of Justice has a pay philosophy that employees are the department's most important resource in its efforts to fulfill its mission. Therefore, the ability to attract and retain highly qualified, competent employees and to promote growth and professional development is critical. Employee competence combined with their overall performance and contribution to the success of the organization, should largely determine their compensation and career advancement opportunities. The department's compensation system is intended to encourage positive behaviors that contribute to the effectiveness of the department.

The latest adjustments were primarily for recruitment and retention, career ladders, and to reward high performing staff with pay incentives. The increase was necessary to maintain equity to other agencies and bring them closer to the market midpoint. While other agencies had been giving pay raises during the 2011 and 2013 biennium, the DOJ had not. Increases were selective and had to be justified.

The Agency continues to experience high turnover in license and permit technicians, attorneys, and forensic scientists.

This amendment is for \$1,106,984 in 2016 and \$1,096,942 in 2017.

Sponsor _____

MAJOR LITIGATION INCREASE

If HB 244 is not passed, the department is asking for an additional, **\$800,000 for the biennium**, to cover the expected 10 year average for the cost of major litigation.

During the 2013 Legislative Session, the Legislature cut our general major litigation budget by \$1million for the biennium but then added back in \$2 million OTO, restricted, for *Montana v. Wyoming* for a total of \$3.2 million. Without the OTO our base is now \$1.2 million, \$2 million less than the FY15 funding for major litigation which includes paying for *Montana v. Wyoming*.

The \$800,000 increase along with our current \$1.2 million base funding, would get us back to the 10 year average of \$1 million per year (\$2 million biennial) that has historically been spent on major litigation. If funding was increased by \$800,000 for the next biennium, our total funding would still be \$1.2 million less than last biennium,

We seek this funding not only to pay for expensive cases already in the pipeline, but also to enable our office to effectively litigate suits which we are required to defend after every legislative session. Cases already in the pipeline include *Montana v. Wyoming*, *Planned Parenthood*, and litigation involving the proposed *Coyote Island Terminal*.

Although we do not know what major litigation suits will be brought following this legislative session, they will be filed as they always are, it is our duty to defend them, and will require adequate funding to do so.

Our request is also necessary to enable us to pay court-ordered attorney fees. We recently were ordered to pay attorney fees in the Montana Immigrant Justice Alliance (MIJA) case. The district court relied upon the Montana Supreme Court's recent decision in *Svee*. We are appealing the MIJA decision. However, if we lose the MIJA appeal, the court-ordered fees may exceed \$100,000 in that case alone. Of greater concern, is the very real possibility that if the attorney fee award in MIJA is not reversed in the next biennium paying court-ordered fees could become the norm rather than the exception. We have multiple cases pending in which attorney fees, if we were ordered to pay them, would be in the hundreds of thousands of dollars.

The additional \$800,000 will bring our major litigation funding to \$1 million per year. This is our traditional funding and the ten-year average. It will enable us to effectively defend legislation passed by the legislature, which is a core function and responsibility of the Attorney General's Office

This amendment is for \$400,000 for 2016 and \$400,000 for 2017.

SPONSOR _____

LEGAL SERVICES DIVISION FTE RESTORATION

The Legal Services Division is requesting restoration of funding for one lawyer associated with the 4% FTE reduction. As a result of the 4% reduction, the Division is required to absorb a 3.25 FTE cut. This is not feasible for this particular Division.

This Division handles the most critical legal cases in Montana, including defending the legislature in the state and federal courts when our laws are challenged. The Division also prosecutes murderers and sex offenders and protects our most vulnerable citizens, our children, from abuse and neglect.

The Division, which cannot cut 3.25 FTE without affecting critical legal services, is only asking for restoration of funding for one lawyer.

To give some idea of the understaffing in this Division, each of the legal secretaries handles the caseloads of five to seven busy attorneys. That is asking too much of a law office support staff. The ratio of lawyers to paralegal is about 15:1; the industry average is between 3:1 to 5:1. And the attorney positions which are vacant right now illustrate the problem this Division has absorbing the 4% FTE reduction: the positions vacant right now are the Civil Bureau Chief (one of the State's top litigation positions), the tobacco enforcement position (a statutorily mandated position funded by the Master Tobacco Settlement Agreement with tobacco companies) and the Division also has a vacancy in its Child Protection Unit. The Child Protection Unit position is in Great Falls, a community where, tragically, children have recently died because of abuse and neglect by their parents.

This funding is a priority of the Attorney General.

This amendment is for approximately 1 FTE and \$100,000 for 2016 and \$100,000 for 2017.

SPONSOR _____

MONTANA DEVELOPMENTAL CENTER INVESTIGATOR

The Montana Department of Justice is required to conduct investigations of abuse and neglect at the Montana Developmental Center in Boulder. These DOJ investigations are not criminal investigations which can be confusing since it is DOJ doing the investigating. These are civil (administrative) abuse investigations intended to identify any client abuse occurring at MDC which are conducted by non-sworn, civilian investigators. These investigators are similar to auditors in other State agencies who assess and research each allegation and draft findings without peace officer authority. However, if potential criminal acts are discovered in the finding, the report is forwarded to local law enforcement.

State law and federal regulations require that the DOJ abuse investigations at the Montana Developmental Center be completed within 5 business days from the date the report is made to the Montana Department of Justice. Violation of this 5 business day timeline jeopardizes federal and state funding for MDC. This timeline with only a single investigator is literally impossible to meet. If the single investigator is on leave from work for even 2 or 3 days then the deadline is missed.

These are complicated investigations of alleged abuse of a very vulnerable group of people. There are many days when the investigator has six or more simultaneous investigations open – each with a different victim, different suspects and different 5 day deadlines. A DOJ analysis of the workload showed that:

- 15 is the average number of parties interviewed in each investigation. 20 interviews in a single day is the maximum number.
- 50 written pages is the average volume of written documentation reviewed in each investigation.
- 6 – 10 hours is the average time required to compile, document and permanently file records at the conclusion of each investigation.
- The current MDC investigator has accrued over 300 hours of comp time since May 1, 2015 in an effort to meet the requirements of the law governing MDC investigations.

Just since January 1, 2015 MDC has sent 200 abuse allegation reports to DOJ. The DOJ investigator must review each report and classify it. Of those 200 reports 161 are classified Informational Only and 39 were opened for full investigation, 18 of the 39 investigations to date in 2015 have resulted in substantiated abuse.

DOJ needs adequate resources, a second full time MDC investigator, in order to comply with the law or the clients at MDC will be in jeopardy as will any Federal funding.

It is our understanding that there are changes being made at MDC at the request of the Legislature. The expectation is that the need for investigations should drop over the next biennium. Therefore, this position and its funding could be OTO and restricted.

This amendment is for approximately 1 FTE and \$100,000 for 2016 and \$100,000 for 2017.

FORENSIC SCIENCE DIVISION TOXICOLOGIST (STATE CRIME LAB)

The toxicology section has requested additional FTE's in the past legislative sessions to offset a 50% increase in caseload due to the passing of SB42 in 2011.

Although the toxicology section has improved analytical efficiencies, it has had to limit the amount of drug analysis it performs on DUI samples in order to mitigate the strains placed on the section by the large increase in caseload. This is testing that is important and should be done, but can't because of resources.

The section is finding itself in a position where further demands from increased casework whether by legislative or court decisions may require further reductions in drug analysis.

Within the last year, the toxicology section has lost two very experienced analysts to outside opportunities. The analysts have been replaced by more entry-level analysts who require extensive and expensive training programs to bring them up to speed. This staffing transition increases the strain on the system.

Agency	MT State Crime Lab	WA State Police Crime Labs	ID State Police Crime Labs	Washington DC Lab
Toxicology cases / analyst / year	900	650	600	170

This amendment is for 1 FTE and \$148,932 in 2016 and \$143,862 in 2017.

SPONSOR _____

SEXUAL ASSAULT TRAINING

Montana like many states has a problem with the ever increasing offenses of sexual assault. This is not only an issue on our campuses but in every city in our state. Sexual assaults are unique and challenging in how they are investigated and they are clearly the most difficult cases to prosecute. Proper training of law enforcement, victim advocates, medical responders, forensic interviewers as well as prosecutors appear to be a key in addressing the problem and holding offenders accountable. However bringing in a national speaker (expert) can cost between \$1,500 to \$3,000 for travel, lodging, per diem, and speaker's fees. Add in other costs of putting on a training seminar and that limits our office's ability to meet the sexual assault training in our state. It is my understanding that the State Office of Public Defender allocates approximately \$100,000.00 per year for training.

With proper funding our office could offer numerous courses such as:

From Crime Scene to Trial – the course would provide detailed instruction on the investigation of a crime scene and how seemingly unimportant details can become critical at trial. The audience would include prosecutors, social workers, forensic interviewers, and law enforcement.

Trauma Informed Sexual Assault Investigation Training – the course would better equip law enforcement to understand the complexities of sexual assault through training centered on neurobiological impact of trauma, the influence of societal myths and stereotypes, understanding perpetrator behavior, and conducting effective investigations.

Prosecuting Non-Stranger Sexual Assaults – the course with provide prosecutors with practical information and skills to successfully prosecute non-stranger adolescent and adult sexual assault cases. Training would include topics such as sexual assault dynamics, handling reluctant and recanting victims, strategic voir dire, victim impact and diversity and ethical considerations for prosecuting sexual assault.

This amendment is for \$20,000 in FY2016 and \$20,000 in FY2017.

SPONSOR _____

5 YEAR REISSUANCE OF LICENSE PLATES

This request is only necessary if HB628 is not passed. Rolling reissue requires special revenue to fund, pass through expenses in order to pay Department of Corrections. Every vehicle owner is charged \$10 to replace the license plates. Of the \$10, \$2 goes into the general fund and \$8 goes into the state special revenue fund used to pay for costs associated with replacing license plates every five years.

This amendment is for \$1,697,988 in FY 2016 and \$1,703,961 in FY 2017.

SPONSOR _____

MONTANA PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL
Administratively assigned to DOJ

The Montana Public Safety Officer Standards and Training Council, commonly referred to as the POST Council, was created by statute in 2007. The specific statutory duties of the POST Council include, in part, to provide for the certification or recertification of public safety officers and for the suspension or revocation of certification of public safety officers. POST has current open complaint allegations of misconduct against officers that include: assault, dishonesty/perjury, excessive use of force, sexual misconduct, sexual intercourse without consent, theft, false reports, intoxication and disorderly conduct. The requested funds provide for the POST Council to perform their statutory duty of suspension or revocation of officer certifications. The POST Council is “administratively attached” to the DOJ. Because the POST Council is independent of DOJ, they have no “in-house” legal staff. To provide due process and comply with POST Council ARMs during the contested case process, the POST Council purchases attorney services from DOJ Agency Legal Services Bureau to take action against officers. Additionally, the POST Council contracts with private attorneys who serve as hearing examiners, hires expert witnesses, court reporters and transcription staff, which comply with and follows contested case procedures found in the Montana Administrative Procedures Act (MAPA). Lack of funds for legal services for the POST Council would provide a loophole for officers accused of misconduct because the POST Council would be unable to proceed with the suspension or revocation process. The last contested POST Council case cost over eighty thousand dollars to process. Without the funding, allegations of officer misconduct may be received and the POST Council would have no ability to sanction or revoke the certificates of Montana officers who exhibit lack of ethics, or dangerous criminal behavior. These officers may remain working in Montana with no possibility of sanction.

This request returns the budget to what was required last biennium.

This amendment is for \$75,000 for 2016 and \$75,000 for 2017.

SPONSOR _____